



Sophya's mother and father testified about the events surrounding the injury,<sup>1</sup> Sophya's time in the emergency room,<sup>2</sup> her treatment following her discharge from the hospital,<sup>3</sup> and her past<sup>4</sup> and present lifestyle.<sup>5</sup> They described the horrific sight of her hanging lip when they arrived at the hospital<sup>6</sup> and the subsequent healing process.<sup>7</sup> They discussed their daughter's excellence in school, her vibrant personality, her participation in numerous activities, her active interaction with her peers, and her cheerfulness.<sup>8</sup> In short, they portrayed their six-year old daughter as a happy, self-assured and confident child.<sup>9</sup>

There was no evidence that Sophya was self-conscious of the scar.<sup>10</sup> Her parents were concerned about how it might impact her as she grows older.<sup>11</sup> As her father testified, "I am not sure" how she will handle the scar as a teenager.<sup>12</sup>

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<sup>1</sup> *Hr'g Tr.* 22-23, 42-43.

<sup>2</sup> *Id.* at 23-25, 43-47.

<sup>3</sup> *Id.* at 25-27, 44, 46-47.

<sup>4</sup> *Id.* at 20, 40-41.

<sup>5</sup> *Id.* at 27-28, 47, 49.

<sup>6</sup> *Id.* at 24, 42-43.

<sup>7</sup> *Id.* at 25-27, 30-31, 48-51.

<sup>8</sup> *Id.* at 27-28, 33-36, 47-48.

<sup>9</sup> *Id.* at 33, 47.

<sup>10</sup> *Id.* at 33, 50.

<sup>11</sup> *Id.* at 33, 52.

<sup>12</sup> *Id.* at 33.

Dr. Manstein, the plastic surgeon who treated Sophya at the emergency room,<sup>13</sup> discussed Sophya's injury<sup>14</sup> and the possible future treatment options.<sup>15</sup> He opined that even if these options were successful, the scar would be permanent.<sup>16</sup> He did not address the future dimensions of the scar or its likely appearance as Sophya matures.

Dr. Heffelfinger, a plastic surgeon who examined and evaluated Sophya at the defendant's request,<sup>17</sup> described possible treatment options.<sup>18</sup> Although he agreed with Manstein that Sophya would always have a visible scar,<sup>19</sup> he stated that laser treatments could be utilized immediately and subsequently to significantly reduce the scar's size and visibility.<sup>20</sup> The goal would be to make the scar so that "it's not barely perceptible at five feet."<sup>21</sup> He also testified as to the cost of these procedures.<sup>22</sup>

The jury was instructed regarding the components of non-economic damages which consisted of past, present and future pain and suffering, embarrassment, humiliation, loss of enjoyment of life, and disfigurement.<sup>23</sup> The jury returned a verdict of

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<sup>13</sup> *Video Dep. Tr.* 11-15.

<sup>14</sup> *Id.* at 12-13, 15.

<sup>15</sup> *Id.* at 17, 23-24, 27-30.

<sup>16</sup> *Id.* at 23.

<sup>17</sup> *Hr'g Tr.* 67-71.

<sup>18</sup> *Id.* at 71-76.

<sup>19</sup> *Id.* at 71.

<sup>20</sup> *Id.* at 71-74.

<sup>21</sup> *Id.* at 74.

<sup>22</sup> *Id.* at 73, 88-91.

<sup>23</sup> *Id.* at 119-122.

\$37,306.21 for past and future medical expenses, and \$23,000 for non-economic damages, for a total award of \$60,306.21.<sup>24</sup> The plaintiff challenges the award for non-economic damages.

Only where “the record shows that the jury’s verdict resulted in a miscarriage of justice or where the verdict, on the record, cries out to be overturned or shocks [the] conscience” can the “extraordinary relief” of a new trial be ordered for insufficiency of the evidence. *Marra v. Phila. Hous. Auth.*, 497 F.3d 286, 307 n.18 (3d Cir. 2007) (quoting *Williamson v. Consol. Rail Corp.*, 926 F.2d 1344, 1353 (3d Cir. 1991)). When evaluating a motion for a new trial on the grounds that a jury’s decision shocks the conscience, we exercise our own judgment in assessing the evidence. *Id.*

Although both experts agreed that Sophya’s scar is permanent,<sup>25</sup> the defendant’s expert witness testified that with make-up and after a series of non-invasive laser treatments, Sophya’s scar would be barely noticeable.<sup>26</sup> Sophya’s parents testified that she was discharged from the hospital the same day as the incident and required little additional medical treatment for her injuries.<sup>27</sup> Sophya was also presented as an outgoing and well-adjusted child who excelled in school and participated in numerous extracurricular activities.<sup>28</sup>

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<sup>24</sup> *Id.* at 126-127.

<sup>25</sup> *Video Dep. Tr.* 23; *Hr’g Tr.* 71.

<sup>26</sup> *Hr’g Tr.* 72-74, 85-86.

<sup>27</sup> *Id.* at 24-25, 36, 43-44.

<sup>28</sup> *Id.* at 27-28, 33-36, 47-48.

The plaintiffs offer several cases to support their argument that the award for non-economic damages was so small as to shock the conscience. These opinions are of limited use. As an initial matter, the factually-intensive nature of a non-economic damages award makes it difficult to compare Sophya's case to others. The standard of review "is not whether the jury's verdict deviates from a discernibly 'normal' award in comparable cases, nor whether such deviation would seem well justified." *Tormenia v. First Investment Realty Co., Inc.*, 251 F.3d 128, 138 (3d Cir. 2000). Such considerations do not provide an appropriate justification for courts to revise damage awards that have already been decided by a jury. *Id.* A jury verdict will not be disturbed because the damages award was small or the court would have awarded a greater amount. *Epstein v. Saul Ewing LLP*, 7 A. 3d 303 (Pa. Super. 2010).

A different trial strategy may have persuaded the jury to award a greater amount than it did. However, Rule 59 is not a vehicle for plaintiffs to adjust their strategy and relitigate their claims in hopes of a higher award. *Dale and Selby Superette & Deli v. USDA*, 838 F. Supp. 1346, 1348 (D. Minn. 1993) (holding that Rule 59 "is not intended to routinely give litigants a second bite at the apple").

Having determined that the verdict was not against the weight of the evidence and does not "shock the conscience," we shall deny the motion for a new trial.